LUMLEY *v.* GYE IN THE SUPREME COURT. — The case of *Angle* v. *St. P. M. & O. Ry. Co.* (14 S. C. Rep. 240), recently decided in the Supreme Court, possesses much interest from several points of view. The complex facts, admitted on demurrer, are perhaps fairly reducible to the following skeleton. The Omaha Company and the Portage Company were rival railroad corporations. In 1882 the Portage Company was in possession of lands granted it by the State of Wisconsin to aid in the construction of its road. This grant was liable to forfeiture upon non-compliance with certain conditions as to the rate of building. Work was being rapidly pushed forward on the Portage Company's line by the railway contractor, Angle, plaintiff in this suit. Everything pointed to the success of the Portage Company in living up to the conditions of the legislative grant, when the Omaha Company wrongfully intermeddled in its affairs, and by bribery and corruption obtained the control of all its stock from its dishonest officers. The Omaha Company then caused the work of construction on the Portage Company's line to be discontinued, and the plaintiff to be discharged unpaid. Further it induced the Legislature to revoke and forfeit the grant to the Portage Company, and bestow the lands upon itself. The plaintiff Angle recovered a judgment of some $200,000 against the Portage Company on his broken contract, but found no assets. He thereupon filed this bill to reach the land grant in the hands of the Omaha Company. The demurrer of the latter was sustained in the Circuit Court by Mr. Justice Harlan, who now dissents from the opinion of the majority, for the reasons given at circuit (39 Fed. Rep. 412).

Mr. Justice Brewer, in an opinion full of interesting suggestion, upholds the right of the plaintiff upon two grounds. *First*, he adopts the principle of *Lumley* v. *Gye*, 2 E. & B. 216, and declares that an action lies by the plaintiff directly against the Omaha Company. How this legal right attaches to the land in the latter's hands he does not demonstrate. *Secondly*, Mr. Justice Brewer points out that the Omaha Company, having obtained the land in the prosecution of a scheme of fraud against the Portage Company, holds as constructive trustee for the latter. Angle's right from this point of view appears to be that upon which an ordinary creditor's bill is founded. The stress of the defendant's contention was that the action of the Legislature was final, and therefore that the Omaha Company took the land freed from all obligations. The court admits the premise but not the conclusion of this argument. The Portage Company lost its land because the Omaha Company wrongfully and intentionally brought about such a situation of affairs that the Legislature thought it best for the public interest to take away the lands from the weaker and bestow them upon the stronger company. The public interest demanded, first of all, the speedy completion of the road. This end might be attained by an Act of the Legislature passing the title of the land from one company to the other, and leaving all private claims between them to be settled by the judiciary. And it is not to be presumed without strong evidence that the Legislature meant to constitute itself a judge of private rights, even if it constitutionally had the power to do so. Granting the further contention of the defendant's counsel that the Portage Company was already in default when the Act was passed, it is not probable that the Legislature would have passed the Act but for the situation which the Omaha Company had wrongfully created. The wrong-doer shall not be heard to say that the Legislature might have forfeited the grant at any

rate. *Benton* v. *Pratt*, 2 Wend. 385; *Rice* v. *Manley*, 66 N. Y. 82. Whatever land, therefore, the Omaha Company obtained through the agency of the Legislature as a result of its wrong-doing is held in constructive trust for the Portage Company and its creditors. This decision "neither impeaches the validity of the action of the Legislature, nor casts any imputation upon its knowledge or motives." It is a little difficult to follow the application of *Lumley* v. *Gye* to this part of the case. The Legislature was under no contract to the Portage Company, the benefit of which was frustrated by the Omaha's Company's wrongful intermeddling. The land already belonged to the Portage Company, though its title was perhaps defeasible.

In the other branch of the case the authority of *Lumley* v. *Gye* is, however, unequivocally recognized, although the citation of that case must be regarded rather as illustrative than essential to the decision. It is, moreover, to be borne in mind that the difficulties attending the definition of a "malicious interference" or "an act which in law and in fact is a wrongful act" (the phrase of Brett, L. J., in *Bowen* v. *Hall*, 6 L. R. 6 Q. B. D. 333, quoted with approval by Mr. Justice Brewer) do not arise on the facts admitted by demurrer. The action of the Omaha Company which caused the breach of the Portage Company's contract with Angle was fraudulent, not merely "malicious," or "without lawful excuse." Cases like *Walker* v. *Cronin*, 107 Mass. 555, also cited by the court, raise far-reaching questions which are not here involved. It is also worth noticing that the distinction between contracts for personal services and contracts for labor or the sale of goods, still occasionally insisted upon, is not mentioned by Mr. Justice Brewer.

TITLE BY ESTOPPEL. — The doctrine of *White* v. *Patten*, 24 Pick. 324, — that title afterwards acquired by the grantor passes by estoppel to the grantee under a warranty deed not only as against the grantor but also as against one holding by descent or grant from him after acquiring the new title, — has been upheld and extended in the recently reported case of *Ayer* v. *Philadelphia & Boston Face Brick Co.*, 159 Mass. 84. Though scarcely inconsistent with the previous attitude of the court, its conclusion illustrates how arbitrary the American doctrine is.

The case arose on a writ of entry to foreclose a mortgage. One Waterman made a first mortgage in 1872, and another, subject to the first, in 1874. The first was foreclosed in 1876, and the following year the land was reconveyed to Waterman. Then the holder of the second mortgage conveyed to a third person, and the latter to the demandant. The tenant was a grantee without notice under Waterman. In 1876 Waterman was adjudged a bankrupt and received his discharge. The demandant claimed that, by virtue of a covenant of warranty in the second mortgage deed, the legal title to the land when afterwards acquired by Waterman passed at once to the demandant by estoppel. The second mortgage purported to convey only an equity of redemption, while the covenant had been previously held (157 Mass. 57), in a case between the same parties, to be more extensive than the grant. In *White* v. *Patten* the grant was coextensive with the covenant. The same rule was applied in both cases; the reason for its application here being that if a different one were laid down it would only "introduce further technicality into an artificial doctrine." Holmes, J., speaking for the court, said: "The estoppel is determined by the scope of the conventional asser-